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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,514	06/25/2003	David S. De Lorenzo	42P15056	5233
8791	7590	12/10/2004	EXAMINER	
BLAKELY SOKOLOFF TAYLOR & ZAFMAN			SHECHTMAN, SEAN P	
12400 WILSHIRE BOULEVARD			ART UNIT	PAPER NUMBER
SEVENTH FLOOR				
LOS ANGELES, CA 90025-1030			2125	

DATE MAILED: 12/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/606,514	DE LORENZO ET AL.	
	Examiner	Art Unit	
	Sean P. Shechtman	2125	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 14 October 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-36 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-7,13-19 and 25-31 is/are rejected.
- 7) Claim(s) 8-12,20-24 and 32-36 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 14 October 2004 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

DETAILED ACTION

1. Claims 1-36 are presented for examination.

Information Disclosure Statement

2. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered. See page 2, paragraph 4 of the instant specification.

Drawings

3. Objection withdrawn due to the amendment.

Specification

4. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or

REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)

(e) BACKGROUND OF THE INVENTION.

(1) Field of the Invention.

(2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.

(f) **BRIEF SUMMARY OF THE INVENTION.**

(g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).

(h) DETAILED DESCRIPTION OF THE INVENTION.

(i) CLAIM OR CLAIMS (commencing on a separate sheet).

(j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).

(k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1-7, 13-19, and 25-31 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Pat. No. 6,470,238 to Nizar.

Referring to claims 1, 13, and 25, Nizar teaches an apparatus, method and system, comprising:

a device having a thermal characteristic which is dependent on a number of times the device is accessed over a period of time (Col. 12, lines 8-44); and

a controller connected to the device and adapted to control access to the device (Col. 11, line 52 – Col. 12, line 2),

wherein the controller is adapted to calculate a temperature estimate of the device and to control access to the device in accordance with the calculated temperature estimate (Col. 11, line 52 – Col. 12, line 2).

Referring to claims 2, 14, and 26, Nizar teaches an apparatus, method and system above, wherein the controller is adapted to receive an access request (Col. 1, lines 29-32), calculate the temperature estimate in accordance with the access request (Col. 2, lines 1-14; Col. 12, lines 3-28), determine if the temperature estimate exceeds a temperature threshold, and impose an access request budget if the temperature estimate exceeds the temperature threshold (Col. 5, lines 50-63; Col. 3, lines 4-25).

Referring to claims 3, 15, and 27, Nizar teaches an apparatus, method and system above, wherein the controller is adapted to process the access request without an access request budget if the temperature estimate does not exceed the temperature threshold (Fig. 6; Col. 11, lines 13-51; Col. 3, lines 26-31).

Referring to claims 4, 16, and 28, Nizar teaches an apparatus, method and system above, wherein the controller is adapted to process the request in accordance with the imposed access request budget if the temperature estimate exceeds the temperature threshold (Fig. 6; Col. 11, lines 13-51; Col. 3, lines 26-31).

Referring to claims 5, 17, and 29, Nizar teaches an apparatus, method and system above, wherein the controller is adapted to calculate a new access request budget each time the access request budget is imposed (Col. 8, lines 63-65).

Referring to claims 6, 18, and 30, Nizar teaches an apparatus, method and system above, wherein the controller is adapted to calculate a new access request budget periodically (Fig. 1B; Col. 11, lines 60-61; Col. 3, lines 16-25).

Referring to claims 7, 19, and 31, Nizar teaches an apparatus, method and system above, wherein the controller is adapted to calculate the new access request budget when a parameter involved in the calculation is updated (Col. 11, line 52 – Col. 12, line 2).

Response to Arguments

6. Applicant's arguments, see pages 6-8, filed October 14th 2004, with respect to the rejection of claims 1-9, 13-21, and 25-33 under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 5,557,551 to Craft, have been fully considered and are persuasive. The rejection of Craft has been withdrawn.

7. Applicant's arguments, see pages 9-11, filed October 14th 2004, with respect to the rejection of claims 1-7, 13-19, and 25-31 under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 6,173,217 to Bogin, have been fully considered and are persuasive. The rejection of Bogin has been withdrawn.

8. Applicant's arguments, see pages 14-15, filed October 14th 2004, with respect to the rejection of claims 8-12, 20-24, and 32-36 under 35 U.S.C. 103(a) as being unpatentable over Nizar in view of U.S. Pat. No. 6,115,441 to Douglass, have been fully considered and are persuasive. The rejection of Nizar in view of Douglass under 35 U.S.C. 103(a) has been withdrawn.

9. Applicant's submit that the present specification is in proper form. The examiner respectfully disagrees. The examiner respectfully submits that, as provided in 37 CFR 1.77(b), the specification of a utility application should include the section "BRIEF SUMMARY OF THE INVENTION". Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading.

10. Applicant argues that the rejections set forth in the non-final office action are not incompliance with 37 C.F.R. § 104(c)(2). The examiner has thoroughly reviewed Title 37 - Code of Federal Regulations Patents, Trademarks, and Copyrights, and the examiner is unable to locate § 104(c)(2).

11. Applicant's arguments filed October 14th 2004, with respect to the rejection of claims 1-7, 13-19, and 25-31 under 35 U.S.C. 102(e) as being anticipated by U.S. Pat. No. 6,470,238 to Nizar, have been fully considered but they are not persuasive.

Applicant argues that Nizar fails to teach calculating a temperature estimate. The examiner respectfully disagrees. Nizar clearly teaches that “package and die temperatures can be predicted by summing” (Col. 11, line 52 – Col. 12, line 2). The examiner respectfully submits that the portion of the reference cited is not complex and clearly shows and clearly describes the invention claimed by applicant. The examiner respectfully submits that the package and die is a device, a prediction is an estimate, and summing is a calculation. Thus, the examiner respectfully submits that package and die temperatures predicted by summing is a device temperature estimated by a calculation.

Allowable Subject Matter

12. Claims 8-12, 20-24, and 32-36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

13. The following is a statement of reasons for the indication of allowable subject matter: While Nizar teaches calculating a temperature estimate. And Douglass teaches a temperature sensor, wherein accurate temperature information is needed for a variety of control processes, wherein physical devices are used to measure the temperature of a

device. Neither of these references taken either alone or in combination discloses a method, system and apparatus having all the claimed features of applicant's instant invention, specifically including: a new access request budget calculated when an ambient temperature parameter (that is involved in the calculation of an estimated temperature of a device) is updated; and a controller that is not only adapted to calculate a temperature estimate of the device but a controller that does calculate the temperature estimate of the device using an estimated initial temperature of the device, an estimated equilibrium temperature of the device, and an estimated temperature decay rate for the device; wherein said estimated initial temperature, said estimated equilibrium temperature, and said estimated temperature decay rate are used in said calculation.

Conclusion

14. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sean P. Shechtman whose telephone number is (571) 272-3754. The examiner can normally be reached on 9:30am-6:00pm, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo P. Picard can be reached on (571) 272-3749. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SPS

Sean P. Shechtman

December 2, 2004


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